

A Puneet Kumar v Medical Centre Johore Sdn Bhd

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 22–243 OF 1995
ABDUL KADIR MUSA J
7 APRIL 2004

B *Tort — Defamation — Defences — Qualified privilege — Whether occasion of publishing to persons who took down letter, who transcribed it on typewriter and who filed and dealt privilege occasion*

Tort — Defamation — Defences — Qualified privilege — Whether publishing by and to people carrying out legal or moral duty covered by qualified privilege

C *Tort — Defamation — Libel — Allegation that plaintiff's conduct was improper and unbecoming of a consultant surgeon — Test applicable*

D *Labour Law — Employment — Termination of employment — Visiting consultant surgeon — Wrongful termination — Total failure of consideration of team work — Whether termination justified*

The plaintiff brought an action against the defendant alleging: (i) he was wrongly terminated by the defendant by their letter dated 7 August 1995 from carrying on the duty of a visiting consultant at the defendant's specialist centre in spite of the fact that the contract between the plaintiff and the defendant was extended till 31 March 1996; and (ii) by the reason of certain words used in the said letter, he was defamed having regard to his status as a specialist. The defendant's defence was that the publishing occasion of the defamatory words caught by qualified privilege and the termination was justified as the plaintiff's action was total failure of team work.

F **Held**, dismissing plaintiff's claim:

- G** (1) Based on decided and crystalized cases, required it to be objectively looked into, In that context, consideration, inter alia, as to: (i) under what circumstances the alleged defamatory words were published?; (ii) to whom the statement with those alleged defamatory words communicated and or circulated?; and (iii) whether the said statement was published, communicated and or circulated in good faith or otherwise, must be looked into by the court where the defence of qualified privilege was put up (see paras 12–13).
- H** (2) The dictation to typist and the handing to the printer was the accepted mode of writing the documents. The occasion (publishing to persons who took down the letter, who transcribed it on the typewriter and who filed and dealt) was, thereof, privileged (see para 22).
- I** (3) A privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has the interest or a duty, legal, social or moral, make to the person[s] to whom it is made and those person[s] to whom it is so made have a similar and corresponding interest or duty to receive it. The maker of the letter was certainly under a legal and moral duty to communicate the letter to the

four persons referred to by the plaintiff and they similarly have corresponding duty to receive (see paras 28–29).

- (4) None of the relevant medical staff which formed the ‘team’ on the material date was willing to work with plaintiff anymore thereafter as a result of his conduct on that day. That similar stand of ‘other medical staff’ must have propelled the defendants to conclude that there was a ‘total failure of consideration of team work’ ‘so essential to the very existence of guarding the ‘best interest of the patients. The termination was not only justified but was also well within the defendants legal right to do so (see paras 64–65).

[Bahasa Malaysia summary

Plaintif telah memulakan satu tindakan terhadap defendan mendakwa: (i) beliau telah ditamatkan secara salah oleh defendan melalui surat mereka bertarikh 7 Ogos 1995 dari menjalankan tanggungjawabnya sebagai konsultan yang mengunjungi di pusat pakar defendan walaupun kontrak di antara plaintif dan defendan telah dilanjutkan sehingga 31 Mac 1996; dan (ii) kerana beberapa perkataan yang digunakan di dalam surat tersebut, beliau telah difitnah mengambilkira statusnya sebagai seorang pakar. Pembelaan defendan adalah penerbitan perkataan berfitnah tersebut adalah dilindungi oleh perlindungan bersyarat dan penamatan tersebut adalah adil kerana tindakan plaintif adalah kegagalan kerjasama sepasukan.

Diputuskan, menolak tuntutan plaintif:

- (1) Berdasarkan pada kes-kes yang telah diputuskan dan jelas ia perlu dilihat secara objektif, dalam konteks tersebut penilaian, inter alia mengenai: (i) dalam keadaan apa perkataan fitnah yang dituduh diterbitkan?; (ii) kepada siapa perkataan fitnah tersebut dikomunikasikan dan ataudisebarkan?; dan (iii) sama ada pernyataan tersebut diterbitkan, dikomunikasikan, disebar dengan niat baik atau sebaliknya; harus diteliti oleh mahkamah bila pembelaan perlindungan bersyarat dikemukakan (lihat perenggan-perenggan 12–13).
- (2) Makluman pada jurutaip dan pemberian kepada pencetak adalah cara menulis dokumen yang diterima. Keadaan tersebut (menerbit kepada orang yang mencatat surat tersebut, orang yang menaip dengan mesin taip dan orang yang memfailkan dan berurus) adalah dilindungi (lihat perenggan 22).
- (3) Keadaan yang terlindung merujuk kepada perlindungan bersyarat adalah keadaan di mana orang yang membuat komunikasi tersebut mempunyai hak atau tanggungjawab, undang-undang, sosial atau moral membuat kepada orang yang ditujukan dan orang tersebut mempunyai kepentingan atau tanggungjawab yang sama untuk menerimanya. Orang yang membuat surat ini sudah tentu mempunyai tanggungjawab undang-undang dan moral untuk menghantar surat tersebut kepada empat orang yang dirujuk oleh plaintif dan mereka mempunyai tanggungjawab untuk menerimanya (lihat perenggan-perenggan 28–29).

- A** (4) Tiada seorang pekerja perubatan yang terdiri dari ‘pasukan tersebut’ pada tarikh yang material sudi untuk bekerja dengan plaintif selepas itu kerana kelakuan plaintif pada hari tersebut. Pendapat yang sama oleh pekerja perubatan yang lain membuat defendan untuk membuat kesimpulan bahawa terdapat kegagalan pertimbangan bekerja sekumpulan. Penamatan tersebut bukan sahaja adil tetapi adalah di bawah hak undang-undang defendan (lihat perenggan-perenggan 64–65).]
- B**

Notes

- For cases on defences in defamation, see 12 *Mallal’s Digest* (4th Ed, 2002 Reissue) paras 267–273.
- C** For cases on libel, see 12 *Mallal’s Digest* (4th Ed, 2002 Reissue) paras 314–434. For cases on termination of employment, see 8(1) *Mallal’s Digest* (4th Ed, 2003 Reissue) paras 1070–1140. For defences in defamation, see 5 *Halsbury’s Laws of Malaysia* paras [80.092]–[80.102].
- D** For libel generally, see 5 *Halsbury’s Laws of Malaysia* paras [80.110]–[80.113]. For termination of employment, see 7 *Halsbury’s Laws of Malaysia* (2003 Reissue) paras [120.080]–[120.089].

Cases referred to

- E** *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 (refd)
Adam v Ward [1917] AC 309 (refd)
Bryanston Finance Ltd & Ors v de Vries & Anor [1975] QB 703; [1975] 2 All ER 609 (refd)
Dato’ Seri Anwar bin Ibrahim v Dato’ Seri Dr Mahathir bin Mohamad [1999] 4 MLJ 58 (refd)
- F** *Horrocks v Lawe* [1975] AC 135 (refd)
John Lee & Anor v Henry Wong Jan Fook [1981] 1 MLJ 108 (refd)
Joshua Benjamin Jeyaretnam v Goh Chok Tong [1989] 3 MLJ 1 (refd)
Luk Kai Lam v Sim Ai Leng [1978] 1 MLJ 214 (refd)
Lyndon v Yorkshire Regional Health Authority 10 BMLR 49 (refd)
Osborn v Thomas Boulter & Son [1930] 2 KB 226 (refd)
- G** *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173 (refd)
Veitch v De Mornay (1805–1884) SS Vol 1 418 (refd)

Legislation referred to

Defamation Act 1957 s 7(3)

H

Kamalanathan Ratnam J:

- I** [1] The plaintiff, Puneet Kumar who was represented by Mr P Suppiah, brought an action against the Medical Centre Johore Sdn Bhd, the defendant, represented by Mr Supayogan Sinniah assisted by Ms Rita Elizabeth vide encl (2). By the said encl (2), the plaintiff alleged that:
- (i) he was wrongly terminated by the defendant by their letter dated 7 August 1995 from carrying on the duty of a visiting consultant at the

defendant's specialist centre, Johor Bahru, in spite of the fact that the contract between the plaintiff and the defendant was extended till 31 March 1996: and

- (ii) by the reason of certain words used in the said letter, he was defamed having regard to his status as a specialist.

[2] At this juncture, there was no dispute between the parties as to the authenticity of the aforesaid letter and the extension of the aforesaid contract. The main issues before me were, inter alia:

- (i) Having regard to all the relevant facts surrounding the case in hand, was the defendant entitled to issue the aforesaid letter?; and
- (ii) Having issued the said letter, were the relevant words relied on by the plaintiff in para (7) of encl (2) defamatory?

[3] With permission, I propose to deal with (ii) first, followed by facts pertaining to (i) above.

[4] In respect of issue (ii) above, and for convenience, permit me to reproduce of the relevant para (7) of encl (2) and the relevant portion of the aforesaid letter which states as follows:

Defendan dalam surat mereka yang bertaip dan bertarikh 7 Ogos 1995 yang dirujuk di perenggan 5 di atas dan yang mana ditandatangani oleh seseorang yang bernama Azhar Hood, Pengarah Eksekutif kepada Defendan, dan yang mana dialamatkan kepada Plaintiff (dan diterima oleh Plaintiff) dan sesalinan telah dihantar kepada mereka-mereka seperti berikut:

- (1) YB Dato' Md Ali bin Hj. Hashim, Pengerusi, Puteri Specialist Hospital,
- (2) Puan Siti Sa'diah Sh Bakir, Ketua Eksekutif, PPJSB,
- (3) Dr Ng Boon Hui, Pengarah Perubatan, PSH.,
- (4) Encik Yusof Ismail, Administrator, PSH.

dengan cara palsu dan berniat jahat menulis dan menyiarkan perkataan-perkataan berikut mengenai Plaintiff dan profesionnya sebagai seorang Pembedah Pakar dan berkenaan dengan kelakuan Plaintiff dan perkataan-perkataan adalah berikut:

'bahawa kelakuan Plaintiff adalah tak wajar dan tak layak sebagai seorang Pembedah Pakar Perunding (that your conduct was improper and unbecoming of a Consultant Surgeon).'

[5] Para (5) of encl (2) referred to above made reference to the aforesaid letter dated 7 August 1995, informing the defendant of the withdrawal of all facilities accorded to the plaintiff by the defendant prior to the said letter with immediate effect even though it was not denied that, there was an extended contract valid till 31 March 1996 as stated earlier.

[6] The reproduction of the relevant portion of the said 7 August 1995 letter states as follows:

A 7 August 1995

MR PUNEET KUMAR

Dear Mr Puneet,

B RE: WITHDRAWAL OF PRIVILEGES AS VISITING CONSULTANT
SURGEON

The Management Committee is extremely concerned that your recent conduct has made it impossible for you to function as a consultant surgeon at Putri Specialist Hospital, as the operating theatre staff and the anesthetists have indicated in writing they are no longer willing to work with you for reasons that are well known to you.

C We have examined very carefully [of the above and] your response to the same, ..., and *we are of the views that your conduct was improper and unbecoming of a consultant surgeon.* The committee's efforts to resolve the matter amicably has failed

In the light of such circumstances, we have no choice but to withdraw all privileges from you as a visiting consultant surgeon ... with immediate effect.

D AZHAR HOOD

Executive Director.

Cc 1 YB Dato Md Ali bin Hj Hashim
Chairman, Puteri Specialist Hospital.

E 2 Puan Siti Sa'diah Sh Bakir
Chief Executive, KPJSB.

3 Dr Ng Boon Hui
Medical Director, PSH.

F 4 Encik Yusof Ismail,
Administrator, PSH.

(Emphasis added.)

G [7] The words '... that your conduct was improper and unbecoming of a consultant surgeon' offended the plaintiff as to give rise to the second limb of his claim against the defendant as reflected in para (7) of encl (2) aforesaid. Whether or not the employment of those words can be construed as defamatory must therefore be evaluated from the surrounding circumstances of all the relevant facts, which, I will next endeavour to do.

H [8] In respect of the above, it was the contention of the plaintiff by his para (7) of the said encl (2) that those words were published and carbon copied to all the aforesaid four persons:

... falsely and maliciously ... of the Plaintiff and of him in the way of his said profession as a surgeon and in relation to his conduct therein, ...'.

I [9] Those words, according to para (9) of the same, 'In their natural and ordinary meaning ... were meant and were understood to mean that the plaintiff was not a fit and proper person to practice his profession and/or they impute that he lacked knowledge, skill, capacity, judgment or efficiency.'

[10] It was also alleged by the plaintiff, by their para (8) of encl (2) that: **A**

8 the said letter ... was also published to the following people:

- (1) The person who took it down.
- (2) The person who transcribed it on the typewriter.
- (3) The people who filed or otherwise dealt with the said letter as a copy thereof after it has been signed by the said Azhar Hood, ... **B**

[11] Whom the plaintiff alleged that he did not know the names of all those people.

[12] As the result of the aforesaid letter of 7 August 1995, the plaintiff alleged in his para (10) of encl (2) that, he '... has been wrongfully and seriously injured in his character, reputation and profession and been brought in public scandal, odium and contempt'. By that averment, the plaintiff wanted the court to apply a subjective test from the plaintiff's own interpretation palate, which, in my considered opinion, based on decided and crystalized cases such as *Bryanston Finance Ltd & Ors v de Vries & Anor* [1975] QB 703; [1975] 2 All ER 609 (CA), *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173 (SC); *Luk Kai Lam v Sim Ai Leng* [1978] 1 MLJ 214 (FC); *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1MLJ 142; and *Dato' Seri Anwar bin Ibrahim v Dato' Seri Dr Mahathir bin Mohamad* [1999] 4 MLJ 58 requires it to be objectively looked into, In that context, consideration, inter alia, as to: **C**

- (i) *under what circumstances* the alleged defamatory words were published?;
- (ii) *to whom* the statement with those alleged defamatory words *communicated and or circulated?*; and **D**
- (iii) *whether* the said statement was published, communicated and or circulated in good faith or otherwise? **E**

[13] Must be looked into by the court where the defence of qualified privilege was put up. Such consideration becomes of utmost importance once the court is satisfied the relevant statement in issue is defamatory and published. It is therefore necessary for the court to determine whether or not the alleged offending words claimed by the plaintiff are defamatory in their ordinary meaning or are capable of having defamatory implication having regard to the relevant facts surrounding and leading to the alleged defamatory publication of the 7 August 1995 letter. **F**

[14] There was no dispute by the parties that the said 7 August 1995 letter ('the letter') was 'published' within the ambit of s 7(3) of the Defamation Act 1957 ('the Act'). However, the Act, by its preamble specifically states it relates to the '... law of libel and slander and other malicious falsehoods'. The alleged offending words found in the letter were '... that your conduct was improper and unbecoming of a consultant surgeon'. Prima facie, in my considered opinion, those words per se were not libellous as compared to, for examples, the words such as: **G**

H

I

- A** (1) As in the case of *Luk Kai Lam v Sim Ai Leng* [1978] 1 MLJ 214, at p 215:
What is there to be proud of? Before getting married, you slept with your husband for about a year. Earning only \$200 a month you possess a car and refrigerator. Obviously, you have sold yourself to Sia for \$50 a time and to others also for \$50 a time. Hence, you own a car and refrigerator.
- B** (2) In the case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 at p 144:
- (a) that the Minister, Inche Rahman Talib, is guilty of misconduct to the extent that such misconduct renders him ... unfit to be a Minister of the Government.
- (b) that he has been guilty of nepotism.
- C** (c) that by reason of such misconduct he is unfit to hold public office as he has ... shaken public confidence in the fair and impartial administration of public affairs, ...
- (3) In the case of *John Lee & Anor v Henry Wong Jan Fook* [1981] 1 MLJ 108:
Please be advised that our Managing Director, ... have expressed dissatisfaction that you have a *shady reputation* which is not within the policy of the company to retain and or engage such staff.
- D** (4) In relation to government hospitals in Penang and Province Wellesley, in the case of *Veitch v De Mornay* (1805–1884) SS Vol 1 418.
It stunk; it stunk, ... People are sent in curable, and sent out incurable, ... (Emphasis added.)
- E** [15] Which can, understandably be held to be libellous in form. However, such words in the letter, can import the defamatory meaning as considered by the plaintiff from the view of an ordinary reasonable man. Thus to that extent, I am fully satisfied, that those words were defamatory of the plaintiff as contended by his learned counsel. Without the defence of qualified privilege, I would not have any hesitation to enter judgment for the plaintiff accordingly, but could not do so at this juncture, without considering two important ingredients directly affecting the defence of qualified privilege. They are:
- F** (1) whether it was published falsely and maliciously; and
- (2) whether such publication was legally shielded by qualified privilege.
- G** [16] *The Concise Oxford Dictionary* (9th Ed) prescribes the meaning of the words ‘malice’ and ‘false’ to be:
- (1) ‘Malice: 1 (a) the intention to do evil (b) a desire to tease
2 ... wrongful intention ...’; and
- H** (2) ‘false: 1 not according to fact; wrong; incorrect. ...
7 fictitious or assumed’.
- I** [17] Close analysis of the evidence before me and observation of the demeanour of all the witnesses at the trial, I could neither find any tease of cogent evidence that justified me to draw any legitimate inference of the presence of ‘malice’ and or ‘falsity’ in publishing the letter fitting any of the prescribed meanings stated above. What Azhar Hood (DW10), the executive

director of the defendant, did essentially was to convey the decision of the management committee of the defendant. There was no evidence of animosity between the plaintiff and DW10 as envisaged by the case of *Abdul Rahman Talib*. Thus in such a situation, even if those words proved to be 'false', it would not be sufficient to prove malice as in the case of *S Pakianathan*. That burden of proof rests on the plaintiff once the court was satisfied that the letter was published in good faith in the ordinary course of business of DW10.

[18] In the said case of *S Pakianathan*, it was reiterated that, the desire to injure must be dominant motive for the defamatory publication in the sense that, it was actuated by an indirect or ulterior motive (see *Luk Kai Lam v Sim Ai Leng* [1978] 1 MLJ 214 at p 216.). From the facts of the case, I came to a conclusion that, what DW10 did was conveying the relevant message of the management committee of the defendant to the plaintiff as stated earlier believing it honestly that it was true. That fact could not be evidentially proved otherwise by the plaintiff. To summarize the issue in hand, I am privileged to be able to quote Wan Hamzah SCJ, who stated, at p 179 of the *S Pakianathan*'s case, as follows:

The protection afforded by the law to a publication made on an occasion of qualified privilege is not an absolute protection but depends on the honesty of person who makes the publication. If he is malicious, that is, if he uses the occasion for some other purpose other than that for which the law gives protection, he will not be able to rely on the privilege. If the publication ... create[s] a qualified privilege, in order to succeed the plaintiff has to prove express malice on the part of the Defendant. ... [which] means malice in the popular sense of or desire to injure the person who is defamed. ... [The] desire to injure must be the dominant motive [K]nowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty The mere proof that the words are false is not evidence of malice, ... In ordinary cases, what is required on the part of the defamer to entitle him to the protection of the privilege is honest belief in the truth of what he published. But if he was motivated by hatred or a desire to injure and used the occasion for the purpose, the publication would be [malicious] even though he believed the defamatory statement to be true. (Emphasis added.)

[19] From the facts of the case, and at the expense of repetition, based on the quotation above, I could not find any evidence nor infer that DW10 was taking personal advantage of the occasion against the plaintiff with 'the desire to injure' him. The only logical and irresistible inference of doing so could only be that, DW10 must have done it with 'honest belief' to be true and 'in accordance with ... his ordinary duty' as the executive director of the defendant, and was not in any way 'motivated by hatred or a desire to injure' the plaintiff. In that context, I also concluded that, the plaintiff could not establish any express malice on the part of DW10 who acted as an authorized agent for the defendant insofar as sending the letter to the plaintiff.

[20] On the premises above, I found that the defence has successfully rebutted paras (5) and (7) to the extent that the letter was *not* published 'falsely and maliciously' against the plaintiff. Next for me to consider is, whether or not sending carbon copies of the letter to those mentioned in para (7) and encl (2) can be construed as defamatory. For the purpose, I propose to deal it together with the plaintiff's averment in para (8) of encl (2).

- A** [21] Keith R Evans in his book entitled *The Law of Defamation In Singapore and Malaysia* (2nd Ed) at pp 73–74, wrote as follows:

Defamatory words published on a privileged occasion do *not lose* their privilege by being dictated to a clerk or typist [or other office staff engaged in producing it] in the ordinary course of business (see *John Lee & Anor v Henry Wong Jan Fook* [1981] 1 MLJ 108 (FC)). (Emphasis added.)

- B** [22] In such a situation, it can be construed as being ‘incidental to the publication upon an occasion of qualified privilege’. Such an incident was held by Lord Denning MR in *Bryanston Finance Ltd & Ors v de Vries & Anor* [1975] QB 703 at pp 719–720 said as follows:

- C** ... Nearly every businessman dictates his letters to a typist even when they contain defamatory statement about the party to whom they are sent, or about someone else. During the last 50 years it has regularly been held that dictation to a typist is a privileged occasion: see *Osborn v Thomas Boulter & Son* [1930] 2 KB 226. On what ground is dictation to a typist privileged? In my opinion, it is privileged because it is in accordance with the reasonable and usual course of business for a businessman to dictate his business letters to a typist of his, even though these letters contain statements defamatory of some one or other. That very fact gives rise to a common interest between the businessman and the typist so as to make the occasion privileged. The businessman has an interest in dictating the letter to her — so as to get it written — and she has an interest or duty to take it down — so as to type it out for him to sign. I do not think that the privilege depends on the person to whom it is intended to be sent.

- E** ...
Applying the principle to the present case, in my opinion the dictation to typist and the handing to the printer was the accepted mode of writing the documents. The occasion was, thereof, privileged.

- F** [23] I fully adopt what was said by Lord Denning MR above. DW10, as executive director of the defendant would be, in my opinion, in parallel position as ‘a businessman’ referred to by Lord Denning MR. Thus, applying the same principle as above, I held that all those people referred to by plaintiff in para 8(1)–(3) of his statement of claim (encl (2)) can be equated to the ‘typist’s’ position in *Bryanston Finance*; thus the said paragraph was dispelled off by the defence of qualified privilege, leaving me only to discuss the effect of DW10 sending the carbon copies of the letter to those referred to para 7(1)–(4) of encl (2).

- G** [24] It is a question of law whether or not any particular occasion is privileged if the plea of qualified privilege is raised in the defence as in the present case. Keith R Evans, in his book referred to earlier at p 63, categorized occasions which the law treats as privileged. They are:

- H** (1) Statements made between parties who share common or mutual interest in the subject matter of the communication;
- (2) Statements in the discharge of a moral, social or legal duty;
- I** (3) Statements made in the protection of one’s own self interest; and
- (4) Fair and accurate reports of certain proceedings.

[25] On the facts, my view is that (1) and (2) of the above are applicable to the case in hand. An identical classification was echoed by Carter-Ruck, Libel and Slander (4th Ed) Butterworth (1992) at p 130, *Cleark & Lindsell on Torts* (14th Ed), The Common Law Library No 3 at p 998 para 1738 under the heading of *Elements of qualified privilege*, states that:

There are *three* elements necessary to establish the defence of qualified privilege: the occasion must be fit, the matter must have reference to the occasion, and it must be published from right and honest motive.

[26] At p 1002 para 1745, he further writes:

Publication by agent. Where a communication would be privileged if made by a particular person, the privilege will also protect an agent publishing it on his behalf. ... The agent's malice will, however, render the principal liable on the ordinary principles of vicarious responsibility unless the agent has nothing to do with the composition of the libel or approved of it, but merely in obedience to orders does the mechanical act of distributing It.

[27] Premised on the above, DW10's publication and carbon copied the letter to the four persons referred to in the aforesaid para (8) was in consonance with and fulfill the aforesaid three ingredients spoken of by Clerk & Lindsell. YB Dato' Md Ali Hj Hashim, was the chairman of the defendant. In that position, 'the occasion' of him receiving the carbon copy of the letter fitted his position as a chairman of the defendant in the normal cause of the defendant's business. 'The matter' referred to in the said carbon copy of the letter has a direct bearing 'to the occasion', and that is, relating to the conduct of one consultant in the employment of the defendant. The publication in question was certainly, from the facts of the case demonstrated by me earlier on, was done by DW10 with 'right and honest motive' in informing the plaintiff of the decision of the management committee in respect of the complaints levelled against him by the relevant operation theatre team, which were not alien to the plaintiff. The same applies to Pn Siti Sa'adiah Sh Bakir, the Chief Executive of the KPJSB in which, the defendant formed part of the group. As a medical director and the administrator of the defendant, Dr Ng Boon Hui and En Yusof Ismail respectively were justified to have a common interest to protect as DW10; hence the sending of the carbon copies of the letter by DW10 and right to receive the same by both Dr Ng and En Ismail accordingly.

[28] In the context of the above conclusion, I find support in the case of *Adam v Ward* [1917] AC 309, at p 334, per Lord Atkinson, quoted by *Clerk & Lindsell on Torts*, at p 998 as follows:

... a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication [as DW10 as in the case before me] has the interest or a duty, legal, social or moral, make it to the person[s] to whom it is made [that is, (1) YB Dato' Md Ali bin Hj Hashim, (2) Puan Siti Sa'adiah Sh Bakir, (3) Dr Ng Boon Hui and (4) Encik Yusof Ismail, as in the case before me] and [those] person[s] to whom it is so made ha[ve] ... [a similar and] corresponding interest or duty to receive it. This reciprocity is essential. (Emphasis added.)

[29] Based on the said quotation and the facts of the case before me, I am irresistibly compelled to conclude that DW10 was certainly under a legal

- A** and moral duty to communicate the letter to the aforesaid four persons referred to by the plaintiff in his para (8) of encl (2). On the facts, all the aforesaid four persons obviously ‘... have a similar and corresponding duty to receive [the carbon copies of the letter from DW10 ...]’. Once that privilege was established, negligence or carelessness as to the truth of the statement is irrelevant. The reason for it is that the privileged occasion should be used honestly. Recklessness by disregarding the truth or false of a libellous publication, if it can be proved, will provide an evidence of malice, which may dilute the protection accorded by law to the publisher of his right of defence of qualified privilege.
- B**
- C** [30] *Carter-Ruck on Libel and Slander* (4th Ed) Butterworths, London, Dublin, Edinburgh (1992) at pp 146 and 147 quoted Lord Diplock in the case of *Horrocks v Lawe* [1975] AC 135, at p 150 as saying as follows:
- Indifference to the truth of what a person publishes is *not* to be equated *with* carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true, the freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit *if* they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law *must* take them as it finds them. In ordinary life, it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of, its probative value. In greater or less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. *But despite the imperfection of the mental process by which the belief is arrived at it may still be ‘honest’, that is a positive belief that the conclusions they have reached are true.* The law demands no more. (Emphasis added.)
- D**
- E**
- F** [31] Guided by what Lord Diplock had said above, in the present case before me, evidence are in abundance to repel any reasonable doubt presence, if any, on the ‘validity of the conclusions’ contained in the letter by DW10. Even if there was ‘... imperfection of... [DW10’s] mental process by which [his] belief [was] arrived at[,] it may still be ‘honest’, that is, [his] positive belief the conclusions [he] reached [were] true’. He was merely carrying out his ‘legal or moral duty ... in [protecting] ... a legitimate interest [of the defendant] ...’. It will be rare for a person as DW10 to conduct ‘... a rigorous search for all available evidence and a judicious assessment of its probative value’. On the facts, I was fully satisfied that what DW10 did in writing the letter and carbon copied to the four aforesaid persons were justified and failed squarely within the ambit of qualified privilege on a justifiable occasion. Such communication by DW10. in my considered opinion, satisfied the ingredient of what was held by the Federal Court in the case of *John Lee & Anor v Henry Wong Jan Fook* [1981] 1 MLJ 108, ‘as not being ... beyond the exigency of the offasion to avoid the privilege’. I have had full advantage at the trial to evaluate the evidence of DW10 per se and to comparatively analyse it against the rest of the evidence, and in line with the Privy Council’s case of *Joshua Benjamin Jeyaretnam v Goh Chok Tong* [1989] 3 MLJ 1, at p 4 para (H), it was evidentially crystal clear that, the relevant words in the letter
- G**
- H**
- I**

published and communicated by DW10 as stated above, were not coloured in any way '... by malice, that is, by ill-will, spite or improper motive'. As such, it is my humble conclusion that, the defence of qualified privilege was successfully put up by the defence which completely negated para (7) of encl (2).

[32] In the course of the submission, the plaintiff's counsel strongly submitted that DW10 had no authority to publish the letter. If that is to be accepted, then I would have no hesitation whatsoever to rule that this action against the defendant should be dismissed without having to discuss all the above. The reason for it is that, one cannot possibly be held liable vicariously of what was not authorized by the principal, that is, the defendant, unless the plaintiff was relying on the apparent authority DW10 which, unfortunately not pleaded by the plaintiff. In such a circumstance, the plaintiff should have brought this action against the DW10 personally. It would be absurd for me to entertain consideration for a claim of this nature against the defendant who were not privy to DW10's aforesaid publication. However, I was and am fully satisfied on the facts that, DW10 did as he has done with full authority of the defendant for the reasons and or justification as discussed earlier.

[33] Having disposed of the above, I am now left with the issue of 'whether or not the termination by the defendant of the plaintiff as per the letter was proper or otherwise'. The answer to it is essentially a question of facts.

[34] From the facts of the case, the plaintiff's case in this respect pivoted on the averment of wrongful termination of his services as visiting consultant surgeon with the defendant based essentially on the contents of the letter. It was his main contention that he did no wrong when he carried out laproscopic cholecystectomy ('L/C') on Madam Tan Ah Moi ('Madam Tan') on the 11 April 1995. According to him he had not breached any of the provisions of the 'Rules and Regulation Of The Right To Practice For Visiting Consultant' ('The Rules') found at pp 25-62 of PBD1, to which, at p 62 of the same, he was one of the signatories. The Rules was formulated and approved by the Board of Directors of the defendant on the 8 October 1994. Since then, there was no evidence that it was abolished and or substituted with another rule and or the likes.

[35] The other strong point of the plaintiff's contention was that, the defendant in coming to the conclusion to terminate his services with them culminating in the issuance of the letter, he was *not* given the opportunity to defend himself of the allegations as to his 'professional conduct' on the material date. His request to the appropriate officers of the defendant to furnish him further and better particulars to those alleged allegations was not responded by the letter, as such, he contended that, he was therefore unable to give a proper explanation in the form of 'a written report on the [alleged] incident' as required by the letter dated 13 April 1995 from Mohd Sahir Rahmat, found at p 103 of the PBD1. For convenience of prompt perusal, the said letter states, inter alia, as follows:

A

B

C

D

E

F

G

H

I

A 13 April 1995.

Dr Puneet Kumar
Visiting Consultant Surgeon
Puteri Specialist Hospital

B Johor Baru.

Dear Dr Puneet,

COMPLAINT LETTER FROM OPERATING THEATRE

C The Executive Committee have received a complaint letter from O.T with regards to one of your [L/C] cases which you have operated on 11 April 1995.

For the Committee to investigate, we would appreciate if you could forward a written report on the incident.

D Kindly treat this matter with the strictest confidence and please comply within a week (7 days), failing which, the committee will proceed with the investigations.

MOHD SAHIR RAHMAT

Honorary Secretary

E Executive Committee, PSH.

cc Medical Director.

F [36] In supporting those contentions, he portrayed a picture that he had the necessary expertise and he was in full control of what he did. He contended that, if at all the L/C went wrong, it was due to the attitude of the operating theatre team on that day in not co-operating with him and or meeting his demand or request to enable him to carry out the L/C as an expert in the manner it should be conducted and not to be dictated by Dr. Chia Yong Teck (DW2) and or other member(s) of the operating theatre team. As such, all the allegations which crystalized in the complaint letter aforesaid were baseless and should be disregarded by the court, and that he should succeed with his claim in that respect. The defendant's contention is of course otherwise.

G

H [37] What had actually happened can basically be extracted from various letters which Matron Paulina Ta Yong (DW7) attached to her report dated 14 April 1995 (p 65, PBD1) in response to the letter of request by the Honorary Secretary dated 13 April 1995 found at p 103 of the PBD1. The said letter made reference to 'a complaint letter from the O.T...' which must have been written by SL Khoo (DW3) exhibited at p 71, ibid (the transcription is at p 72, ibid) written to Dr Ng Boon Hui (DW5). For purposes of convenience, permit me to reproduce the said transcription, which states as follows:

TRANSCRIPTION

I S.L Khoo,
46, Jln Taman Perling

Taman Perling,

A

Johor Bahru

11 April 1995

Dr. B.H. Ng

B

(MD)

Puteri Specialist Hosp

Reg: Remarks about OT

On the 11 April 95 morning, there was this laproscopic cholecystectomy. I have asked S/N Ho and S/N Haslinawati to scrub. My OT staff told him that S/N Ho will be doing the trolley, as I have instructed. Dr Puneet remarked that 'I am not bothered with sister'.

C

The next thing is that he wanted a third person to scrub for him, Then he asked Roza to scrub up. Who was operating the carbon dioxide gas machine. When Roza told me, I asked her to have a drink before she scrubbed up. When he found out that Roza was not scrubbed up yet, he stormed into the CSSD while I was there, trying to ring for Matron. He remarked that we bully him, and that he has also all the rights of a resident doctor. He said that there is only one case and we cannot give him what he want!

D

I am very upset with this whole incident. Please sort this disgusting incident out with the surgeon, otherwise in future, I shall have to stay away from OT when he has a case. I am really sick and fed up of the attitude of some surgeons here, luckily there's only a minority!

E

Yours Sincerely,

SL Khoo

F

[38] By the aforesaid letter, it could not be disputed that DW3 did the necessary arrangements for the L/C by assigning staff nurse Ho to handle the trolley and staff nurse Haslinawati to scrub to assist the plaintiff. The plaintiff knew about that but disagreed with that arrangement. Instead he asked 'Roza' (Zarina bte Yusof) who was then assigned to operate and was operating carbon dioxide machine to scrub up. That request was communicated by her to DW3. Without saying 'no' to such request, DW3 asked Roza to go for a quick drink before she scrubbed up. As such there was a slight delay in the said request.

G

[39] Upon realising that, the plaintiff stormed in the Central Supply & Sterilization Department ('CSSD') located about 30m away from the operating theatre ('OT') and confronted DW3 while she was trying to ring up DW7. It was at that juncture that he remarked as follows:

H

We bully him, and that he has also all the rights of a resident doctor. ... he has only one case and we cannot give him what he want!.

[40] DW3 was very upset with the said remark and requested DW5 to sort out the matter with the plaintiff, '... otherwise in the future [she] shall have to stay from OT when [the plaintiff] has a case.'

I

A [41] Documentarily, what was stated by DW3 above was corroborated one way or another by the letters from:

(1) Mazni (p 66, PBD1, the heading of which is: 'KEKECOHAN DI OT PADA 11 April 1995 ('L1')):

B (2) Zurina Hj Yusof, (the translation is at p 70, *ibid*) the heading is: 'Subject: Uncontrol situation at OT on 11 April 1995' ('L2');

(3) S/N Ho (transcription is at p 76, *ibid*) the heading is: 'REF: Case [L/C] Mr Puneet 11 April 1995 ('L3');

(4) Azizah Bte Hj. Adnan (transcription is at p 78, *ibid*) ('L4');

C (5) Haslinawati Jasad (transcription is at pages 83 & 84, *ibid*), the heading is: 'PERISTIWA KEKELOHAN DI DEWAN BEDAH (11 April 1995)' ('L5').;

(6) Zalina, at pp 85 & 86, *ibid* ('L6');

D (7) Supulechimy, at p 89, *ibid*;

(8) Chew (transcription at pages 93 & 94, *ibid*), its heading is: RE INCIDENT HAPPEN IN OPERATING THEAT[RE]: ('L8');

(9) Malathy Balakrishnan (transcription at p 96, *ibid*) ('L9'); and

E (10) Zainab Aziz, at pages 97 & 98, its heading is: 'KEJADIAN YANG BERLAKU DI OT DAN CSSD' ('L10').

[42] L1-L10 are letters from OT staff attached to DW7's letter of 14 April 1995 to the Chairman of the EXCO of the defendant (p 65, *ibid*).

F [43] L1 identified the incident on 11 April 1995 as 'Kekecohan' as reflected by its heading. L2 described the incident as an 'uncontrol situation', while L5 used the words 'Peristiwa Kekelohan ...'. From the facts and close analysis of L1-L10, my factual conclusion is that, what was summarised by DW3 in her '14 April 2003 report' (p 65, *ibid*) in essence was true. The plaintiff was solely responsible for the birth of the unwanted incident of 11 April 1995 which had created a scene that '... frightened all the staff in OT.'

G

[44] I have the opportunity to closely examine all the evidence of both PW1's as well as those of DW1-DW10 and come to the conclusion that, there was no reason whatsoever as to why any of the OT staff would like to create such a scene as to annoy PW1. Close scrutiny of such evidence, I believed what was stated by defendant's witnesses in their respective material particulars. There was no evidence whatsoever of any kind of animosity between any of the OT staff and PW1 before 11 April 1995. The whole incident started when PW1 instructed staff nurse Haslinawati to exchange places with staff nurse Ho contrary to what was specifically assigned to them by DW3. The reason given by the plaintiff in doing so was that, the former was more familiar with the instruments to assist him with the L/C and not staff nurse Ho even though DW3 wanted her to learn the duties of a trolley nurse. To that, PW1 replied that '... he was not bothered with sister [Khoo].' That reply of his

H

I

was brought to the attention of DW3. In spite of that remark, PW1's request was still met by DW3 and those staff nurses, and the operation went on as normal for a short while.

[45] However, not long after that PW1 further requested assistant nurse Rozarina who was then attending to the carbon dioxide machine to assist him since staff nurse Ho was not able to hold the camera properly. In response to that, DW3 then asked Rozarina to have a quick cup of tea before scrubbing herself to help PW1 as requested, and PW1 was informed of the same. Rozarina did as instructed which resulted her to be at the OT 5–7 min later. 5–7 min to have a quick cup of tea to me is very reasonable. However, Rozarina's aforesaid absence triggered the anger of PW1 who then requested one of the OT staff to call DW3. DW3 came before Rozarina appeared in the OT, and PW1 was then informed of the above. Later, DW3 left the OT and went to CSSD to phone DW7. While she was on line with DW7, PW1 'stormed into CSSD and passed remark to her that,

... we bully him, and that he has also the right of a resident doctor. He [has] ... only one case and we cannot give him what he want.

[46] All those happenings upset DW3 whereby she wrote her letter as per p 72 of the PBD1 to Dr BH Ng (DW5). In the last paragraph of the said letter, she wrote, inter alia, as follows:

I am very upset with this whole incident. Please sort out this disgusting incident out with the surgeon, otherwise in future, I shall have to stay away from OT when he has a case. ...

[47] Her reporting to DW5 in respect of her instruction to Rozarina ('Zarina') as stated above, was corroborated by Rozarina herself in her L2. L2 (p 69, PBD1), inter alia, states:

Pada masa itu saya sudah tidak sedap hati kerana Dr Puneet menyuruh saya scrub manakala S/N Khoo [DW3] menyuruh saya minum dahulu memandangkan kes ini akan memakan masa yang panjang. ... You go and take your drink, if Dr Puneet asking for you I will take the responsibility.

[48] In this case, Dr Puneet asked for Rozarina by 'storming into the CSSD' as stated earlier, and DW3 did 'take the responsibility' by going to the OT and informed PW1 of her instruction to Rozarina 'to have a quick cup of tea' as explained above.

[49] In L6, at p 85, *ibid*, Zalina wrote to DW7 of the same matter, inter alia, as follows:

Setelah beberapa minit kemudian A/N Roza [Zarina] yang tidak kelihatan daritadi tidak juga masuk dan scrub. Lalu Dr Puneet pun dengan keadaan marah keluar (*unscrub*) memanqil Mazni dan menyuruh dia memberitahu sister supaya masuk ke dalam. ... Dr Puneet beritahu sister [ie DW3] bahawa dia perlukan seorang lagi Assistant Nurse dan sister [DW3] meniajawab dia menyuruh Roza pergi cepat minum dan scrub. (Emphasis added.)

- A** [50] From the above, it can clearly be concluded from L2 and L6 that:
- (1) it is without doubt that DW3, inspite of not being happy with her original scheduled arrangements as to the assigned duties of her staff being upset by PW1, she did endeavour to meet all the requests of PW1, but did not deny that she has asked Rozarina to have a quick drink before scrubbing herself to assist PW1 with his L/C; hence giving credence to her testimony in that material particulars; and
- B**
- (2) it also undoubtedly demonstrates in my mind that PW1 loss his cool when his request to have Rozarina assisting him with his L/C was delayed or not met promptly, That annoyed PW1 which led him to leave the OT for a short while to go to CSSD to confront DW3 and demanded her for an answer as to Rozarina's absence as requested. It was at CSSD that PW1 shouted to DW3 when the latter was on the phone with DW7 to explain to her as to what had happened at the OT then. PW1, of course denied he had ever shouted to DW3 as alleged by her. However, close analysis of relevant facts, portrays otherwise as shown below.
- C**
- D** [51] At p 89 of PBD1, Supuletechimy on the 12 April 1995 wrote as follows:
- Dear Matron [DW7],
- For your information about... 10.40 am sister Khoo [DW3] was in CSSD ... while we are busy packing ward things, Mr Puneet suddenly came to our Department and *shouted loudly* at Sister Khoo. He said that sister Khoo can bully your staff *but* cannot bully him (Mr Puneet).
- E**
- W/A Supuletechimy. (Emphasis added.)
- F** [52] Other than what was earlier quoted, Zarina in her L6 at pp 85 and 86, also wrote as follows:
- ... A/N Roza sedang scrub dan Dr Puneet pun keluar mencari sister [DW3]. Saya yang ditugaskan menjadi circulating nurse pada pagi itu keluar untuk mengambil gaun Dr Puneet. Ketika saya menuju ke Strile Room, saya *nampak* Dr Puneet berdiri di dalam coffee room lalu keluar menanya di manakah sister Khoo kepada saya. Saya katakan saya tidak nampak sister kerana saya baru keluar dari bilik operation. Lalu saya terus masuk ke Strile Room dan saya terus masuk ke CSSD untuk melihat jika [DW3] berada di situ.
- G**
- Di CSSD saya melihat [DW3] menggunakan talipon dan saya tidak sangka DrPuneet mengekori saya dari belakang. Kemudian ... S/N Lina ... tiba-tiba masuk memanggil Dr Chia ke CSSD semacam ada sesuatu terjadi. Dr Chia, S/N Lina dan saya pun pergi ke CSSD dan *kami nampak Dr Puneet sedana memarahi [DW3]*. (Emphasis added.)
- H**
- [53] The telling of Rozarina having tea to PW1 by DW3 was also heard by S/N Ho as evidenced by her transcription of her letter to DW7 (p 76, PBD1) as follows:
- I**
- ... A/N Rozarina walked out to prepare herself. So, after some while, about 5-7 min later Mr Puneet wondering *why* A/N Rozarina still not scrub in yet after he called one of the H/A to call [DW3] in.

[DW3] walked in and told Dr Puneet H/A Rozarina having a cup of tea now and the[n] she walked out again. **A**

... So Mr Puneet was so angry and he told Dr Chia he is not operating, then he remove[d] his glove[s] and gown and walked from OT side door.

... we noticed [then] that C02 [carbon dioxide] is finishing so S/N Lina asked permission to change gas. Mr Puneet was grumbl[ing] again, anyway he just sat for a while before continu[ing] the operation. (Emphasis added.) **B**

which by itself corroborated what was stated by Zalina and DW3 in material particulars as quoted earlier.

[54] Besides S/N Ho, Azizah by her letter dated 12 April 1995, L4 (p 77, *ibid*) further confirmed the above when she wrote, **C**

Berhubung dengan kes semalam antara Dr. Puneet dan sister Khoo [DW3].

Ketika saya sedang bekerja sister Khoo [DW3] datang ke CSSD untuk menggunakan talipon nak menghubungi Matron [DW7]. *Tiba-tiba Dr Puneet datang jerit-jerit marah dengan mengeluarkan perkataan yang tidak sedap didengar.* Kemudian S/N Lina, Zarina dan Dr Chia keluar ke CSSD untuk melihat apa yang terjadi. (Emphasis added.) **D**

[55] The transcription of Haslinawati at p 83, *ibid*, also have words of similar effect, It states, *inter alia*: **E**

... Roza terus keluar sehingga lebih kurang lima minit, tidak juga kembali, Mr Puneet tertanya dan mengarahkan Mazni memanggil [DW3] masuk dan terus berkata 'what happen'. I ask Roza to take drink, dan dia [DW3] terus keluar. Mr Puneet menjadi marah dan dia [PW1] buka pintu (guna kaki) dan berkata 'Sister I want one scrub nurse' tiada jawapan. Kemudian Mr Puneet terus unscrub dan keluar OT. Saya menjadi takut'. (Emphasis added.) **F**

[56] From the above extracts of various aforesaid letters, it clearly demonstrate that DW3 did go to CSSD to give a call to DW7 and that PW1 did leave the OT for a short while which he should have not done so. It also shows that, the way PW1 asked DW3 while she was on the phone with DW7 for the reason stated earlier also annoyed DW3 and frightened some of the staff of the OT on the material date. In that context, Supulechimy in her letter to DW7 dated 12 April 1995, (p 89, B, PBD1) categorically stated that while she was busy packing ward things, 'Mr. Puneet suddenly came to our department and shouted loudly at sister Khoo [DW3]. ... S/N Lina, Zalina and Dr Chia came to our department and saw the incident. After seeing that they went back to OT'. That incident has led Lina Chew to refuse to work with PW1 anymore as reflected by her letter dated 12 April 1995 to DW7 (Transcription, at pages 93 & 94 at last sentence). That 'shouted loudly' was described by Zainab Aziz vide the translation of her letter L10 (p 99, *ibid*, line 15) as 'scold[ed] Sister.' **G**

[57] From the gist of the aforesaid L10 of Zainab, it confirmed what others had described one way or another in their respective material particulars. It confirmed that: **H**

I

- A** (1) there was a request from PW1 to have Rozarina to assist him with his L/C instead of person assigned by DW3;
- (2) the delay in Rozarina to scrub triggered the annoyance of PW1;
- (3) that annoyance ended up in an unpleasant confrontation of words between PW1 and DW3;
- B** (4) that the cumulative effect of the above also frightened other OT staff which resulted some of them expressing their clear intention of not wanting to assist PW1 in his future operation (s);
- (5) that, in the course of the events above, PW1 did leave the OT to go to CSSD where the unnecessary confrontation between PW1 and DW3 took place;
- C** (6) that there was clear and cogent evidence to show that at certain stage of the operation, carbon dioxide level was not normal which could have been fatal to the patient had it not been rescued by the other OT staff.
- D** [58] From the above, it is my considered conclusion of facts that, the root cause of all the unwanted incidents both at; the OT as well as at CSSD was ignited by PW1 himself. It is thus a cumulative evidentiary conclusion of facts that, he and only him was and is to be blamed for OT's staff attitude towards him after the relevant incident both personally and professionally.
- E** Personally, he should have been more gentle and diplomatic towards the supporting staff of the OT in which case, in all probabilities, such unnecessary tense atmosphere would not have arisen. Professionally, in the circumstances of the situation then, he should not only carry out his operation according to his own personal and professional evaluation, but should also take the view or views of the other members of the relevant OT team, in particular,
- F** that of DW2 (Dr Chia), anaesthetist. If that was observed by the PW1, I am very positive that there would not have been a break-down of the 'team work'. 'Team work' is without any shadow of doubt, formed the substratum of any successful operation. As such, PW1's comment of Dr Chia in his letter to DW6 in para (7) p 119 of PBD1, which states, inter alia, as follows:
- G** 7 The whole problem to keep things in perspective resulted from 1 letter from Dr Chia, unsubstantiated in nature. ... I am prepared to involve outside experts to show how wrong Dr Chia is in writing this letter. My only comment now on reflection of events past is best explained in Bahasa Malaysia, '*Dr Chia telah ditipu oleh kebodohan dirinya sendiri.*' (Emphasis added.)
- H** was unjustified and without support of any cogent evidence made available throughout the trial of this case.
- I** [59] From what had just been quoted above the inference, I could reasonably drawn is that, he was putting the whole blame for the incident to Dr Chia, wherelse there was an exodus of cogent evidence to the contrary. Both direct and circumstantial evidence irresistibly compelled me to factually conclude that the plaintiff was the sole architect of the said incident flowing from his unreasonable demand without taking into consideration of the opinions of others. His remark that 'Dr Chia telah ditipu oleh kebodohan dirinya sendiri'

must have been his persuasion to the court to accept his version that, it was Dr Chia who was responsible for the incident and not him after his strong statement that he was ‘...prepared to involve outside experts to show how wrong Dr Chia [was] in writing [the aforesaid] letter.’

[60] Unfortunately, not a single ‘outside expert’ was called by the plaintiff inspite of all the opportunities available to him during the trial. Such failure compelled me to conclude that, such an uncalled remark aforesaid is clearly an indication of the plaintiff having ‘an axe to grind’ against Dr Chia. By such demonstration, it enhanced my conclusion of the plaintiff’s uncompromised attitude of his that, he can never be wrong in his professional judgment and that his decision must be religiously obeyed even though it encroached other areas of expertise, such as that of Dr Chia’s. Such a stand would certainly be against the norms of conventional need of ‘team work’ which form the very fabric of any successful surgical operation.

[61] As an ‘employee’ of the defendant, the plaintiff was bound by ‘Medical Staff By-laws’ (‘the By-Laws’) exhibited at pp 31–63 of PBD1. It gives the rights, privileges to and laid down obligations and liabilities, direct or indirectly, of all ‘employees’ of the defendant employed under the terms of reference of the By-Laws. Its preamble states, *inter alia*, as follows:

(c) ...the Medical Staff ... are hereby organized in conformity with the By-Laws ...

Every activity of the Medical Staff in the Hospital or on behalf of the Hospital is subject to the By-Law of the Hospital.

... ‘Medical Staff’ shall be understood to include all the medical and dental practitioners who are granted the rights and privileges of practicing medicine and attending to patients (Emphasis added.)

[62] In the context of the facts of this case, ‘every activity’ referred to above, must necessarily include the L/C which is one of the ‘right and privileges of practising medicine and attending to patients’ accorded to the plaintiff by the defendant. As such, since he was well within the ambit of the definition of ‘Medical Staff’ mentioned by the said preamble of the By-Laws, such ‘rights and privileges’ must be exercised within the intent and purpose of para (c) of the said preamble. That ‘intent and purpose’ is:

(c) that the best interest of the patients entrusted to its care are met by co-operative effort [of the Medical Staff of the defendant], (Emphasis in italics).

[63] ‘Co-operative effort’ in the context of this case, is synonymous with what the relevant defendant’s witnesses termed as ‘team work’. As such, it is my considered evaluative conclusion of facts that, the plaintiff must therefore be responsible for his own creation discussed above.

[64] In the case of *Lyndon v Yorkshire Regional Health Authority* 10 BMLR 49, at p 50, it was held, *inter alia*, that:

Held (1)... The case concerned the competence of a surgeon to carry out a skilled abdominal surgery of various kinds which by its very nature involved risks to the health and safety of patients. A health authority is entitled to suspend a surgeon if it genuinely and reasonably believed that it was necessary to do so pending further inquiries.

- A** which is to a great extent identical in effect to terminating the ‘rights and privileges’ accorded to the plaintiff by the defendant in the present case. The plaintiff was given full opportunity to put things right before he was terminated from the ‘employment’ of the defendant based on the undisputed extended contract governed, by implication, the terms of reference of the By-Laws. In that respect, PW1 did what he was supposed to have done,
- B** but the bottom line was that, none of the relevant Medical Staff which formed the ‘team’ on the material date was willing to work with him anymore thereafter as a result of his conduct on that day. That similar stand of ‘other Medical Staff’ must have propelled the EXCO of the defendants to conclude that there was a ‘total failure of consideration of ‘team work’’ so essential to the very existence of guarding the ‘best interest of the patients entrusted to [the defendant’s] care.’; thus the aforesaid termination.
- C** [65] In conclusion, on the facts, not only the aforesaid termination was justified but was well within the defendant’s legal right to do so and as such, the plaintiff’s claim ought not to be entertained. I therefore held that the plaintiff’s claim against the defendant is hereby dismissed with costs.
- D** *Plaintiff’s claim dismissed.*

Reported by AG Kalidas

E

F

G

H

I